## Environmental Protection (Powers and Penalties) and Other Legislation Amendment Bill 2024

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CEMENT CONCRETE & AGGREGATES AUSTRALIA

1 March 2024
Mr Aaron Harper MP
Chair
Health, Environment and Agriculture Committee
Queensland Parliament
George Street
Brisbane QLD 4000

Submission via online form here

**ENVIRONMENTAL PROTECTION (POWERS AND PENALTIES) AND OTHER LEGISLATION AMENDMENT BILL 2024**

Cement Concrete & Aggregates Australia (CCAA) welcomes the opportunity to provide comments to the Health, Environment and Agriculture Committee on the Environmental Protection (Powers and Penalties) and Other Legislation Amendment Bill 2024.

CCAA is the peak industry body for cement manufacturers, concrete suppliers and extractive operators throughout Australia. Collectively known as the heavy construction materials industry, CCAA members operate cement manufacturing and distribution facilities, concrete batching plants, hard rock quarries and sand and gravel extraction operations throughout the nation to meet Australia's building and construction needs. These businesses are made up of the majority of material producers and suppliers ranging from large global companies to SMEs and family operated businesses.

Heavy construction materials are vital to delivering the infrastructure required to support Australia's built economy which underpins the development of our nation's physical infrastructure, generating approximately $15 Billion in annual revenue and employing 30,000 Australians directly and a further 80,000 indirectly.

Our industry has worked hard over many years to improve its environmental performance, minimise the environmental impact of operations, and where possible, achieve a net positive benefit to biodiversity and other environmental values. Our industry works in partnership with government regulators and other stakeholders to achieve agreed environmental outcomes in an open and transparent manner.

Within this context, we believe it is important for the environmental policy framework to maintain a robust but constructive approach with the sector in being proactive, proportionate, and supportive in how it deals with the industry and take a balanced approach to education and enforcement functions.

We believe this approach – together with legislative and policy changes over the past 25-30 years – has resulted in significant improved environmental outcomes in relation for our industry compared to previous decades. Emissions associated with our industry – such as dust, noise and stormwater – are much more closely managed now that they were in the past.

CCAA supports modernizing the State's environmental regulations to better align the regulation effort with the environmental risk. This regime should recognise the need for a triple bottom line approach to sustainability, balancing the environmental, social and economic well-being of Queensland.

CEMENT CONCRETE & AGGREGATES AUSTRALIA

CCAA made a detailed submission to the Department of Environment and Science on the proposed amendments to improve the powers and penalty provisions of the *Environmental Protection Act 1994* as outlined in the Government's Consultation Paper in Nov'23 and makes the following detailed comments on the Bill.

***1. Environmental Enforcement Order (EEO)***

**Risk:** The current drafting of the Bill provides for the administering agency to issue an EEO to an operator that is compliant with their current Environmental Authority (EA) conditions, where the conditions of the EA are deemed insufficient.

**Detail:** The CCAA submission on the Consultation Paper did not include any issues in relation to the proposed changes to Statutory Notices, including the creation of the new EEO, as the information provided in the Paper did not raise concerns. On review of how these changes have been incorporated into the Bill, a range of negative implications have been identified for member operations that are Environmentally Relevant Activities operating under EAs i.e. cement and quarry operations.

Clause 28 of the Bill outlines the new EEO provisions. The new Section 359 sets out the 'enforcement grounds' that can trigger the Administering Authority to issue an EEO, including (among other examples) where it is deemed necessary to secure compliance with an environmental protection policy or achieve General Environmental Duty (GED). Compliance with the conditions of an EA does not protect an operator from this - new Section 362(3) confirms that an EEO can be issued even where an EA authorises the activity. Refer also point 2 below, where compliance with an EA is not necessarily a defence against contravening GED.

This arrangement could mean that an Environmentally Relevant Activity (e.g. quarry or cement facility) licensed under an EA and operating in compliance with its EA conditions, could be issued an EEO where the Administering Authority deems those conditions insufficient in relation to a new environmental protection policy and GED. For example, a quarry may operate under an older EA, the conditions of which may not be equivalent to the regulator's expectations under current environmental protection policies. If the Bill is adopted, the Administering Authority could issue an EEO to compel an operator to undertake actions over and above their EA conditions - e.g. change water management systems to meet more stringent water release limits than those in the EA. This can result in the need for significant expenditure to change onsite stormwater management infrastructure or install costly monitoring equipment. An EEO can also require an operator to cease an activity indefinitely or until further notice and / or change operating hours (new Section 367).

The Bill's Explanatory Notes reinforce this risk to operations with EAs (page 25, paragraph 1):

*The intent of this provision is to clarify that an environmental authority is not a barrier to issuing an EEO to address environmental harm or the risk of environmental harm where such harm is not clearly authorised or regulated by the environmental authority.*

Further, the new Section 369A states that it is an environmental offence to not comply with an EEO. The existing Section 215 of the EP Act states that the Administering Authority can permanently

amend an EA (including conditions) without the EA holder's agreement, where an environmental offence is committed by the EA holder. If an operator cannot comply with the requirements of the EEO, and continues to operate, this would constitute an environmental offence under the EP Act and could see EA amendments imposed.

This provision imposes the same, unacceptable level of risk, uncertainty, and potentially significant financial implications to operations as Recommendation 12 in the Government's Consultation Paper which sought to amend EA Conditions without agreement and was not supported by the CCAA and was not adopted in the Bill following consultation.

Where the intent of the Act and environmental outcomes are being achieved under existing, albeit older, EA conditions, operators should not be at risk of being issued an EEO and there should be no need to amend EA conditions without the **agreement** of the EA holder. Any new EA conditions proposed following the EA review should be optional for an operator to implement.

***2. Offence for Contravening General Environmental Duty (GED)***

**Risk:** An EA holder could be found in breach of the GED, even when operating in compliance with EA conditions.

**Detail:** The CCAA submission on the Consultation Paper did not identify issues in relation to the introduction of an offence for contravening GED, as the information provided in the Paper did not raise any concerns. Specifically, the Paper confirmed: '*the offence will not apply to an aspect of minimising environmental harm that is currently addressed through an environmental requirement, for example, an EA.*'

On review of how this proposal has been incorporated into the Bill, there are implications for member operations that are Environmentally Relevant Activities operating under EAs, i.e. cement and quarry operations.

Clause 13 of the Bill amends Section 319 of the Act to incorporate offences in relation to the GED. The amended Section 319(3) sets out when an action is ***not*** an offence against GED, including (in item (b)) when the action is undertaken in accordance with an EA ***and*** where the EA conditions provide for 'reasonably practicable measures' to be taken in relation to the action. The second part of this two-part test requires that the Administering Authority deems the EA conditions and actions taken by the operator to be 'reasonably practicable measures' in relation to the issue. These are not defined and would therefore be subjective. Where the Administering Authority does not deem the EA conditions / actions of the operator to be 'reasonably practicable measures', there is a risk that an operation that is compliant with its EA conditions could be found to have contravened the GED and committed an offence under the Act.

Again, this provides for unacceptable sovereign risk for member operations. 'Reasonably practicable measures' should be defined as incorporating those measures that achieve compliance with an EA and / or relevant measures from an industry accepted body of knowledge such as an accepted Code of Practice.

**Note:** For our member operations that do not operate under an EA (i.e. concrete plants), the amended Section 319(b) includes compliance with a Code of Practice as being taken to mean compliance with the GED, reflecting the current defence mechanisms of the Act and the commitment made in the Consultation Paper: *'A provision will also make clear that where the person has complied with a Code of Practice, the person is taken to have complied with the GED.'* - a positive outcome and supported by the CCAA.

***3. Duty to notify of environmental harm***

**Risk:** The amended requirement for notifying potential or actual environment harm is ambiguous and subjective, posing risks to all members.

**Details:** The CCAA submission on the Consultation Paper did not raise any issues in relation to Recommendation 16 which supported an amendment to the duty to notify. However, the review of the proposed changes detailed in the Bill identified that the wording is highly subjective and increases the level of uncertainty and risk for member operations (i.e. concrete, cement and quarry operations).

Currently, the Act requires a person to report potential or actual environmental harm within 24 hours of when a person 'becomes aware'. Clause 17 of the Bill amends Section 320A of the Act, to commence the 24-hour notification period to when the person 'becomes aware, ***or ought reasonably to have become aware***' of potential or actual environmental harm. This is not defined and is therefore subjective, posing potential risk to CCAA members in an instance of potential or actual environmental harm.

Further clarification would be required to understand how this amendment would be implemented - i.e. how would the regulator determine when an operator 'ought reasonably to have become aware'? Alternatively, the clause 'ought reasonably to have become aware' should be deleted.

Queensland's regulatory environment needs to be internationally competitive to continue to attract capital to invest into Queensland to ensure a sustainable and competitive heavy construction materials industry. This in turn facilitates Queensland's improved productivity, housing affordability and lower infrastructure costs.

Please do not hesitate to contact me on E: [redacted] to discuss any of these issues in more detail.

Yours sincerely,

[redacted]

**ROGER BUCKLEY**
**INTERIM STATE DIRECTOR QUEENSLAND**